1966

The First National Bank of Logan, of Logan, Utah, A National Banking Association v. Walker Bank & Trust Company, A Corporation : Respondent's Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

THE FIRST NATIONAL BANK OF LOGAN, OF LOGAN, UTAH, a National Banking Association,
Plaintiff-Appellant,

- vs -

WALKER BANK & TRUST COMPANY, a corporation,
Defendant-Respondent,

No. 10[illegible]

RESPONDENT'S BRIEF

Appeal from the Judgment of the First District Court of Cache County
Honorable Lewis Jones, Judge

Joseph S. Jones
W. Robert Wright
RAY, RAWLINS, JONES & HENDERSON
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Logan, Utah
The First National Bank

TABLE OF CONTENTS

Cases Cited

TABLE OF CONTENTS — (Continued)

Statutes Cited

Other Authorities Cited

IN THE SUPREME COURT OF THE STATE OF UTAH

THE FIRST NATIONAL BANK OF LOGAN, OF LOGAN, UTAH, a National Banking Association,
Plaintiff-Appellant,

- vs -

WALKER BANK & TRUST COMPANY, a corporation,
Defendant-Respondent,

No. 10621

RESPONDENT'S BRIEF

STATEMENT OF THE KIND OF CASE

This is an action brought by appellant, a National Banking Association, for a declaratory judgment that the operation of certain drive-in and walk-up facilities constructed by respondent would be in violation of U.C.A. 1953, 7-3-6, as amended, and for an injunction restraining respondent from operating said drive-in and walk-up facilities.

DISPOSITION IN LOWER COURT

The case was tried by the court and the court entered a judgment in favor of respondent dismissing appellant's complaint and holding that the establishment and opera-

tion of the drive-in and walk-up facilities constructed by respondent would not constitute the establishment of a branch bank within the meaning of U.C.A. 1953, 7-3-6, as amended, but would constitute only an extension and enlargement of respondent's Cache Valley Branch Bank.

RELIEF SOUGHT ON APPEAL

The appellant seeks reversal of the judgment of the trial court.

STATEMENT OF FACTS

Appellant is a National Bank with its main office at the southwest corner of the intersection of First North and Main Streets in Logan, Utah. Appellant also operates a branch at 442 North Main Street in the city (R. 64, Tr. 7), which is the subject matter of the litigation in *Walker Bank & Trust Company v. Saxon,* 352 F.2d 90 (10th Cir. 1965), cert. granted, 34 U.S. Law Week, 3377 (Mar. 3, 1966), No. 875. Respondent is a state bank having its main office at Salt Lake City, Utah, and a branch (the Cache Valley Branch) located at the northeast corner of the intersection of First North and Main Streets in Logan, Utah.

The Cache Valley Branch was acquired by respondent in 1956 as a result of a statutory merger whereby the Cache Valley Banking Company was merged with and into Walker Bank & Trust Company. At the time of the merger respondent did not acquire the ownership of the real property on which the banking business was conducted. However, in December of 1964 it became the

owner in fee simple of all of the land and buildings shown on Exhibit "2" (R. 17 and R. 64, Tr. 8), including the land on which the drive-in and walk-up facilities in question are located, subject only to the 12 foot right of way shown on said Exhibit (*Ibid.*).

The portion of the building marked "A" on Exhibit "2" was occupied at the time of the trial by Utah Mortgage Loan Corporation but arrangements had been made for it to vacate so that the entire premises would be occupied by respondent for banking purposes. The expansion was required by respondent due to the overcrowded conditions and to provide better services for the customers at its Cache Valley Branch. (R. 64, Tr. 20-22). While the record does not so show, the entire premises are now occupied by respondent and used for banking purposes.

The drive-in and walk-up facilities in question are shown on the photographs, Exhibits 3, 4 and 5 (R. 17, Tr. 21-22). They are located on the land owned by respondent immediately east of the 12 foot right of way, and the nearest of the two drive-in and walk-up facilities is 14 feet 6 inches east of the easterly wall of the main building (R. 17, Ex. 2). At the time of the trial the facilities had not been placed in operation but they were then connected to the main building by means of pneumatic tubes, and it was testified that upon completion of the remodeling of the main building the tubes would be extended to the first teller's cage in the main building. (R. 64, Tr. 23). The testimony shows that at the time the facilities were to be put in operation, deposits

made at the facilities, together with the deposit slips, would be transmitted through the tubes to the first teller's cage in the main building and funds used in the facilities for paying withdrawals and cashing checks would be sent from that cage through the tubes to the facilities. (R. 64, Tr. 23-24). Although the record does not so show, the projected remodeling, including the extension of the pneumatic tubes has been completed, and the facility is presently in operation according to plan. These facts show that the operation of the facilities is connected with and a part of the branch operation.

Neither the Utah State Banking Commissioner nor the Board of Governors of the Federal Reserve System has granted any authority to respondent to operate the drive-in and walk-up facilities.

ARGUMENT

POINT 1

THE PROPOSED DRIVE-IN AND WALK-UP FACILITIES OF RESPONDENT DO NOT CONSTITUTE A BRANCH BANK WITHIN THE MEANING OF U.C.A. 1953, 7-3-6, AS AMENDED.

Since Logan is a city of the second class the operation of an additional branch in that city by respondent would be prohibited by U.C.A. 1953, 7-3-6, as amended, which provides in part:

> Except in cities of the first class, or within unincorporated areas of a county, in which a city of the first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regu-

larly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank.

The sole question presented in this case is whether the operation by respondent of the drive-in and walk-up facilities in question constitutes the establishment of a branch bank as that term is defined in U.C.A. 1953, 7-3-6, as amended, or whether the operation of said facilities constitutes merely an extension or enlargement of respondent's existing branch. The term branch bank is defined in the above statute as follows:

> The term 'branch' as used in this act shall be held to include any branch bank, branch office, branch agency, additional office or any branch place of business at which deposits are received or checks paid or money lent.

Respondent contends that the operation of the proposed facilities represents a mere extension or enlargement of its existing branch and does not constitute the establishment of an additional branch bank.

(A) OPINIONS OF THE ATTORNEYS GENERAL OF UTAH AND OTHER STATES SUPPORT RESPONDENT'S POSITION.

The Attorney General of the State of Utah has rendered an opinion, No. 66-025, dated March 25, 1966, at the request of the Utah State Bank Commissioner. This opinion states that a drive-in facility similar to the drive-in and walk-up facilities of respondent would not be a branch within the meaning of Section 7-3-6. A copy of his opinion, a copy of the letter referred to therein,

and a copy of related documents are set forth in the appendix to this brief.

The Attorney General concluded that such a facility was a part of the main bank because of the physical connection between the two by means of the pneumatic tube through which the money and documents would pass back and forth. His reasoning in that opinion is applicable to the case now before the court. Respondent's drive-in facilities at the time of the trial were connected to the main building by pneumatic tubes, and the evidence further shows that upon the completion of the remodeling and the expansion of the facilities at the branch the tube would be extended to the first teller's cage and deposits made at the facilities would be transmitted to the teller's cage through the tubes, and funds used in the facilities for paying withdrawals and cashing checks would be transmitted from said teller's cage through said tubes. (R. 64, Tr. 23-24).

Appellant has set forth opinions of the attorneys general of fourteen other states in its brief and states that respondent's facilities *may* have been a branch according to nine of these opinions. However, a review of these opinions, which were referred to in respondent's trial brief in the case below, reveal that thirteen of the fourteen opinions concluded that the drive-in facilities involved did not constitute branches and the remaining opinion (Appellant's Brief at 22.) states that a facility which is separated by more than an alley and which is not adjacent to the main banking house is prohibited.

In appellant's analysis of the opinions of the attorneys general referred to above (Appellant's Brief at 28.) and in appellant's statement of facts (Appellant's Brief at 3.) reference is made to the occupancy of a portion of respondent's premises by a separate business establishment. It is stated on page 28 of Appellant's Brief that respondent's facilities would be a branch in the State of Illinois because they are separated from the main building by an intervening business establishment. On page 3 of said brief appellant states that there is no prohibition against leasing the offices which were occupied by the separate business to others after the drive-in facilities are open for business by respondent. In these arguments appellant ignores Finding of Fact No. 5 (R. 53) which states that the business occupying a portion of the respondent's building between the banking operation and the proposed facilities will be vacated by the corporation occupying it and will be occupied by respondent at or about the time the operation of the facilities commences. In addition, the trial court in its memorandum decision, dated March 14, 1956 (R. 64, Tr. 35) imposed the condition that the intervening business establishment be moved out and that all signs and marks indicating the presence of it be removed so that there would remain no intervening business operating between the main building and the proposed facilities. It must be assumed that the respondent will comply with the lower court's order in this regard, and, in fact, the above requirements of the trial court have already been accomplished.

(B) CASES FROM OTHER JURISDICTIONS HAVE DEALT WITH THE ISSUE OF WHETHER DRIVE-IN FACILITIES ARE BRANCHES.

There are no Utah cases dealing with the issue of whether or not drive-in and walk-up facilities at a bank constitute a branch but cases have been decided in other jurisdictions dealing with this issue. In *Michigan National Bank v. Saxon,* Civil No. 821-62, D. D.C., July 25, 1962, the plaintiff sought a declaratory judgment that a drive-in facility five hundred feet distant from the establishment branch was not an additional branch but merely a part of or an extension of the existing branch. In deciding that the facility was not an additional branch, the court referred first to the definition of the term "branch" as defined in *Rev. Stat.* § 5155 (1875), 12 U.S.C. § 36(f), which is identical in wording to the Utah statute defining branch and in an unpublished opinion, a copy of which is found in the record of this case (R. 30-36), stated:

> The only possible phrase that could apply to the drive-in facility involved in this case is the phrase 'additional office.' It does not mean, however, that every time a bank rents an additional room or additional offices in another building, as banks do sometimes when their business expands, that they are opening a new branch, the words 'additional office' must be reasonably construed as meaning a *separate and independent office, operating in the same way as branch banks generally operate,* and not merely additional office space to an existing facility.
>
> Here we have a small structure connected by a pneumatic tube and *operating as part of the*

branch now existing. It seems unreasonable to the court to call that a separate branch. (Emphasis added.) (R. 33-34)

Appellant in his brief on page 7 cites *Continental Bank & Trust Co. v. Taylor,* 14 Utah 2d 370, 384 P.2d 796 (1963), as authority for the proposition that the holding and language of the *Michigan National Bank* case is inapplicable to the case before the court. The *Continental* case held that the making of loans by banks through insurance agents who prepared the necessary documents for such loans which were then forwarded by said agents to the bank was in violation of Section 7-3-6. These loans were negotiated either "at the office or home of the agent or the office or home of the customer or even upon the street." 14 Utah 2d at 376, 384 P.2d at 800. The facts in that case are in no way comparable to the facts in the instant case. The Attorney General of Utah in Opinion No. 66-025, *supra,* distinguishes the *Continental* case from a case involving a drive-in facility.

In *Jackson v. First National Bank,* 246 F. Supp. 134 (M.D. Ga. 1965), the court held that a drive-in facility 290.57 feet distant from the main building in no way connected to the main building other than by telephone and separated from the main building by ten buildings containing businesses and by an alley, was a branch bank. Appellant in its brief on pages 11 and 12 states that the court in the *Jackson* case said that a lack of a pneumatic tube made no difference in its decision and that the court did not consider a tube a physical connection. Contrary to these inferences in Appellant's Brief, the court said the presence or absence of a pneumatic tube

was perhaps a relevant factor for consideration but that the absence of such a tube was not a controlling fact *in the case under consideration.* It is clear that the absence of a pneumatic tube in a case where the proposed facility was as far removed from the main building as described above, would not be a significant additional fact. However, in the case before this court where a distance of only fourteen feet, six inches separates the facilities from the main building, where there are no intervening businesses and where the land is owned by respondent over which the intervening right-of-way is located, the presence of pneumatic tubes is important since it demonstrates that the facility is operated as part of the branch and that the two are physically connected.

In *State Chartered Banks in Washington v. Peoples National Bank,* Civil No. 6338, W.D. Wash., February 28, 1966, one of the issues decided by the court was whether a drive-in facility was a branch within the meaning of *Rev. Stat.* § 5155 (1875), 12 U.S.C. § 36(f). In deciding the issue, the court looked at the physical situation involved and stated in an unreported memorandum decision that the "proposed facility is some 260 feet or more from the principal office, on a separate lot, in another block, across a busy thoroughfare, has a different address and is in a completely disconnected building. No stretching of the term 'additional office' is required at all to see it fits perfectly. The proposed facility is, therefore, a 'branch' within the meaning of the federal statute."

In *Great Plains Life Insurance Co. v. First National* Bank, 316 S.W. 2d 98 (Tex. Civ. App. 1958), plaintiff

sought a court decree that its lease with defendant was void on the ground, among others, that defendant was conducting an illegal bank business on the leased premises because of three tellers' windows located across an alley from the banking office. The tellers' windows were connected to the banking office with pneumatic tubes and a tunnel. The court quoted the Texas banking code as follows:

> No . . . bank shall engage in business in more than one place, maintain any branch office, or cash checks or receive deposits except in its own banking house.

In deciding for the defendant, the court said:

> As we understand a branch bank, it is a separate entity and deposits made in a branch bank are payable there and only there unless the branch bank be closed or demand for the payment by the depositor be refused, then demand for the payment will be against the mother bank. For convenience of its depositors three teller's windows were established to permit a depositor to drive in and make a deposit, and there is nothing in this record to show that the tellers of the drive-in portion of the bank had any more authority than any other tellers in the bank building proper. This drive in depository is nothing more than a part of the appellee bank. All deposits made at the tellers' windows are placed in appellee's bank.

It is clear from the foregoing cases that in determining the issue of whether or not a drive-in facility is a branch bank the courts look primarily to the distance of the drive-in facilities from the main building and to the physical connection between the two. When close proximity and a physical connection are found to exist, it

appears from the opinions of the attorneys general and from the cases above cited, that the drive-in facility is considered part of the branch or an extension or enlargement thereof. In contrast to the fact situations presented in the *Jackson* and *State Chartered Banks in Washington* cases, the proposed facilities in this case are only fourteen feet, six inches from the main building, are located on the same parcel of land owned by respondent on which the remainder of the branch is operated and are connected to the main building by means of pneumatic tubes. The trial court has also found that the facilities "will be operated as an integral part of the branch bank, both from the standpoint of operation and proximity to the main building," and that said operation "will provide more convenient services for [respondent's] customers." (R. 54)

(C) THE ADMINSTRATIVE INTERPRETATION OF THE STATUTORY DEFINITION OF THE WORD "BRANCH" IS THAT IT DOES NOT APPLY TO A DRIVE-IN FACILITY CONNECTED WITH AND IN CLOSE PROXIMITY TO AN EXISTING BANK OR BRANCH BANK.

In *Utah Power & Light Co. v. Public Service Commission,* 107 Utah 155, 152 P.2d 542 (1944), this court stated:

> Consistent administrative interpretations over the years by the officers charged with the duty of applying the statute and making each part work efficiently and smoothly are entitled to great weight by the courts. (152 P.2d at 557.)

All state banks are under the supervision of the state banking department, U.C.A. 1953, 7-1-7, as amended, and the bank commissioner has the power to adopt rules and regulations in harmony with law to govern the conduct, operation and management of state banks, U.C.A. 1953, 7-1-4. The bank commissioner is also the officer charged with responsibility of granting or denying applications to establish branch banks, U.C.A. 1953, 7-3-6, as amended.

The Comptroller of the Currency is vested with general administrative powers and duties for the administration of national banks and is charged with the duty of their supervision, *Rev. Stat.* § 324 (1875), 12 U.S.C. § 1. He is also the officer charged with the duty of granting or denying applications for the establishment of branches by national banks, *Rev. Stat.* § 5155 (1875), 12 U.S.C. § 36.

Spencer C. Taylor, the chief banking examiner of the Utah State Banking Department, the acting Bank Commissioner in 1960 and the Bank Commissioner 1961-1965, testified that the drive-in facility at the principal office of the Continental Bank & Trust Company at Salt Lake City, Utah, shown on a photograph marked Exhibit "6" (R. 16-17), has been operating since July 27, 1960, that the drive-in facility of the Beehive State Bank at its main office in Salt Lake City, Utah, as shown on a photograph marked Exhibit "7" (R. 16-17) has been operating since October 9, 1961, and that the drive-in facility at the Commercial Security Bank in Ogden at its main office, shown on a photograph marked as Exhibit "8" (R. 16-17) is currently being operated in the

same manner as it has been operated since its establishment (R. 64, Tr. 26, 29, 30). He stated that the State Banking Department, which is aware of all the drive-in facilities of the state banks in the State of Utah has not granted authority to any of the above three named banks for the operation of the drive-in facilities shown on the exhibits (R. 64, Tr. 28, 30, 31).

Dr. ElRoy Nelson, Vice President and Economist of First Security Corporation, testified that the Comptroller of the Currency has not given approval or granted authority for the operation of the drive-in facilities of First Security Bank at 4th South and Main Street in Salt Lake City, as shown on the photograph marked Exhibit "1" (R. 16-17), for the drive-in facilities at Provo, Utah, which are 300 feet from the main building, nor for the drive-in facility at Brigham City, Utah, which is separated from the main building by an abstract office, a barber shop and a nineteen foot alley (R. 64, Tr. 18-19). He also testified that First Security Bank is operating many drive-in facilities throughout the State and that most of First Security's offices in the Salt Lake area have either a present drive-in facility or one is under construction. None of these facilities are operated pursuant to permission or authority from the Comptroller of the Currency. (*Ibid.*)

Appellant argues that a more definite statute dealing with drive-in facilities would protect the banking community from losing large capital investments in drive-in facilities because of now being forced to speculate whether drive-in facilities will be allowed to operate

once they are constructed. The argument overlooks the fact that a determination by this court that respondent's drive-in facilities in question are a branch would jeopardize the large investment in drive-in facilities now being operated in this state which are comparable to the facilities in question.

(D) COMMON USAGE AND PRACTICE UNDER THE STATUTE IN QUESTION SUPPORT RESPONDENT'S POSITION.

Common usage and practice under a statute are of great value in determining its meaning when a statute is ambiguous. In 82 C.J.S. Statutes § 358, Practical Construction or Usage, it is said:

> On the principal of contemporaneous exposition, common usage and practice under the statute, or a course of conduct indicating a particular understanding of it, will frequently be of great value in determining its real meaning, especially where the usage has been acquiesced in by all parties concerned and has extended over a long period of time. A practical construction of a statute is not conclusive on the courts, but, if unvarying for a long period of time, it should be disregarded only for the most cogent reasons.

The testimony received at trial from Dr. ElRoy Nelson of the First Security Bank and from Spencer Taylor, the chief banking examiner of the State Banking Department with regard to the course of conduct of a banking community under the statute in question establishes that the community's understanding of the mean-

ing of the statute would allow drive-in facilities of the nature respondent is now operating in Logan. That the banking community has adopted this understanding of the meaning of the statute for a long period of time is evidenced by the number of drive-in facilities which now exist throughout the State of Utah.

The 1933 Legislature in defining "branch" dealt with the situation as it then existed. The State Bank Commissioner and the Comptroller of the Currency have construed the statute in light of present day methods of transacting business which have led to the common practice of the establishment and operation of drive-in facilities by the banking community. The reasons supporting an affirmation by this court of the common usage and practice under this statute are more compelling than any hypothetical situation that appellant has set forth in support of its contention that this court should set aside the lower court's ruling.

CONCLUSION

The Findings of Fact made by the lower court and the testimony given at trial establish that the drive-in and walk-up facilities in question are a part of respondent's Logan branch bank and constitute a mere extension or enlargement of said branch which will provide better service to respondent's customers. Therefore, the judgment of the trial court should be affirmed since the establishment and operation by respondent of said facilities do not constitute the establishment of a "branch" bank within the meaning of U.C.A. 1953, 7-3-6, as amended.

Respectfully submitted,

Joseph S. Jones
W. Robert Wright
RAY, RAWLINS, JONES,
& HENDERSON
800 Walker Bank Building
Salt Lake City, Utah
Attorneys for Respondent

APPENDIX

Opinion of Utah Attorney General, No. 66-025 and Related Documents

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OFFICE OF THE ATTORNEY GENERAL
STATE OF UTAH

OPINION OF LAW
No. 66-025

Requested by W. S. Brimhall, Utah State Bank Commissioner, 574 East Second South, Salt Lake City, Utah.
Prepared by Attorney General Phil L. Hansen and Staff.

QUESTION

May a bank establish drive-in facilities for the cashing of checks, making deposits, and performing such banking functions as can be accomplished at a drive-in facility on property owned by the bank, but separated from the bank building by a driveway not owned by the bank, said drive-in facility and the bank building to be connected by a pneumatic tube under the driveway for conveying money and papers back and forth, as well as television facilities which will enable the customer and the teller in the bank to see and converse with each other?

CONCLUSION

Yes. This opinion is limited, however, to the factual situation presented.

OPINION

Under the banking laws of the State of Utah, a bank may conduct its business only at its banking house. Any

other offices, agencies, or places of business at which a bank may receive deposits, pay checks, or loan money are known as "branches." In order to establish a branch, a bank must follow a procedure set forth in the statutes in order to obtain a license from the State Bank Commissioner for the establishment of the branch. Section 7-3-6, Utah Code Annotated, 1953, as amended (1963), provides in part:

> The business of every bank shall be conducted only at its banking house and every bank shall receive deposits and pay checks only at its banking house except as hereinafter provided.
>
> With the consent of the bank commissioner, any bank having a paid-in capital and surplus of not less than $60,000 may establish and operate one branch for the transaction of its business; provided, that for each additional branch established there shall be paid in an additional $60,000 (capital and surplus).
>
> The term "branch" as used in this act shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business at which deposits are received or checks paid or money lent.

The instant problem is to determine whether the proposed drive-in facility is a branch or a part of the banking house.

It appears reasonably clear from the above statutes that the proposed drive-in facility, if it were not connected to the bank building by a pneumatic tube and television, would be a branch. This was the effect of a letter from the Attorney General, State of Utah, to the

Utah State Bank Commissioner, dated November 8, 1957, in which the Attorney General advised the Bank Commissioner that a drive-in facility located 141 feet from the bank building was a branch bank.

However, it seems that in this particular situation the proposed drive-in facility would not constitute a branch, but would be an integral part of the banking house. Here, the bank building and the drive-in facility are separated by a driveway, but they are physically attached, in a sense, by the pneumatic tube. The teller is located in the bank building and the money and documents pass back and forth between the customer and the teller via the pneumatic tube. The customer and the teller can talk with and see each other by means of television. It appears more logical, under these facts, to conclude that the drive-in facility is a part of the banking house rather than a branch bank.

Aside from the above conclusion that the proposed drive-in facility is part of the banking house, it could be persuasively argued that the banking transaction actually takes place within the bank where the teller is located, thus meeting the requirements of Section 7-3-6, Utah Code Annotated, 1953, quoted above, that "the business of every bank shall be conducted only at its banking house and every bank shall receive deposits and pay checks only at its banking house . . ." This situation, it appears, is distinguishable from the one in *Continental Bank and Trust Company v. Taylor,* 384 P.2d 796 (Utah 1963), in which the Utah Supreme Court held that the making of loans by a bank through insurance agents who

prepared the necessary documents for financing the sale of automobiles and insurance thereon and then forwarded said documents to the bank constituted branch banking. The basis of the court's decision was that the transactions were completed by the insurance agents, who were agents of the bank, outside of the banking house. The court said:

> We consider the transaction completed and the money "lent" at the time (1) the executed note and mortgage are delivered to the representative of the Bank, and whether he is an insurance agent and whether or not he is paid by the Bank are immaterial factors, and (2) the customer is authorized by the Bank to draw checks thereon.

From the foregoing rationale, it is concluded that it would not be unlawful for the proposed drive-in facility to be constructed and operated in the manner described in the question. This opinion, however, is limited to the particular factual situaton presented.

Dated this 25th day of March, 1966.

Respectfully submitted,
Attorney General Phil L. Hansen
[signed]

PLH/hwv/bp

SPRINGVILLE BANKING CO.

Established 1891

Springville, Utah

July 16, 1957

Mr. Seth Young
State Bank Commissioner
State Capitol
Salt Lake City, Utah

Dear Seth:

I am enclosing a Utah County Plats Plan of Block 12 Plat "A", Springville City.

You will notice in this plat that our Bank Building is on the right-hand corner and from marked point "A" the west corner of our building to marked point "B" the east point of our property now used as a parking lot is 141.25 feet. Our plan is to use the property to the west of the bank building for a possible drive-in location and a possible site for our safe deposit vault.

It was your suggestion that I submit the plat so that you could turn it over to the Attorney General to see whether such a plan would comply with the banking laws of the State of Utah.

Yours very truly,

/s/ F. C. Packard
President

FCP:c
encl

[A copy of the plat referred to in this and the following letters is reproduced on the fold-out, inside back cover.]

July 18, 1957

Honorable E. R. Callister
State of Utah
Capitol Building

Dear Mr. Callister:

One of our state-chartered banks has inquired of us as to whether or not it would be possible to use the property to the west of its building for a drive-in location and a possible site for a safe deposit vault.

A copy of the letter is attached for your further information.

Will you please give me your opinion on the above matter.

Very truly yours,

/s/ Seth H. Young
Bank Commissioner

SHY:mm
Enc.

Also enclosed is a Utah County Plats Plan of Block 12 Plat "A", Springville City, which please return to this office.

November 8, 1957

Seth H. Young
Bank Commissioner
Building

Dear Mr. Young:

You have asked whether a state bank may open a "drive-in" location 141 feet from its main banking house without complying with the provisions of the Utah law relating to branch banks. In my opinion, such question must be answered in the negative, and I have heretofore verbally expressed this view to officials of the bank concerned. However, in order to confirm this previous conversation, I submit the following for your consideration.

Section 7-3-6, U.C.A. 1953, as amended, provides in part:

> *The business of every bank shall be conducted only at its banking house and every bank shall receive deposits and pay checks only at its banking house except as hereinafter provided.*
>
> With the consent of the bank commissioner and the approval of the governor, any bank having a paid-in capital and surplus of not less than $60,000 may establish and operate one branch for the transaction of its business; provided, that [for] each additional branch established there shall be paid in an additional $60,000 (capital and surplus).
>
> * * *
>
> *The term "branch" as used in this act shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business at which deposits are received or checks paid or money lent.*

> Any bank desiring to establish one or more branches or offices shall file a written application therefor in such form and containing such information as the bank commissioner may require. No bank shall be permitted to establish any branch or office until it shall first have been shown to the satisfaction of the bank commissioner and the governor that the public convenience and advantage will be subserved and promoted by the establishment of such branch of [or] office and the bank commissioner may by order permitting the establishment of such branch or office designate and limit the character of work and service which may therein be performed. (Emphasis added.)
>
> * * *

In my opinion, the proposed drive-in location is so separated from the banking house that it is a branch bank, branch office, branch agency or additional office within the contemplation of Section 7-3-6, supra. Therefore, the provisions governing the branching of banks would be applicable and the state bank in question may not establish the drive-in facility without making formal application for a branch and otherwise complying with the Utah law, particularly Section 7-3-6, U.C.A. 1953, as amended.

Very truly yours,

RAYMOND W. GEE
Assistant Attorney General

RWG/jlt

UTAH COUNTY PLATS

BLOCK 12 PLAT A SPRINGVILLE CITY

Second South street

B 141.25 A

Springville Banking Company
3508-56
I 103

Springville Banking Company
1145-56
I 103-B

Otis A & Emma C. Payzant
1840-46
136.0 Ft.

J. Lewis Bird etux
1799-51
I 104

A.B. Gore
1064-49
I 105

John H & Mary E.C. Whiting
4556-45
I 106

Springville Banking Co.
I 114

D.R. Wightman
I-107

D.R. Wightman
I 108

Melba C. Packard et al
Thomas E. Child
Mae S. Child 2154-56
Life Estate I-109

John Y. & Birdella R. Bearnson
66-51
I-110

Paul M-S.E & E.J. Hamond
687-49
I-111

G.S. Wood Mercantile Company
I-112

Senior Rentals a partnership
660-55
I 113-A

Ruth E. Scoville & Rhoda M. Groesbeck
E 113

Senior Rentals a Partnership
660-55
I 98 A

Emil Ostlund
I 98

Rivoli Corporation
13099-55
I 97

Senior Rentals a Partnership
660-55
I 102

Maud Peterson
2421-55
Decree of Divorce
I 96

John & Vondella Scouten
5495-45
I 95

Whiting & Haymond Contractors
2113-5
1-0446-56
I 94

Marion F Miner
I 92

Senior Enterprises Inc.
19293-52
I 93

Senior Rentals a Partnership
660-55
I 101

Senior Rentals a Partnership
660-55
I 103 C 3

Ralph E & Lois C. Child
I 100

Delvon Humphrey
5207-56
I 99

Paul E. Beals etux
6222-56

Scale 30 Feet To An Inch

Third South Street.

Robert L. Wilson 1954

TABLE OF CONTENTS

AUTHORITIES CITED

CASES

STATUTES

OTHER AUTHORITIES